No. 79-512

Supreme Court, U. S.
FILED
SEP 24 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

SCINDIA STEAM NAVIGATION CO., LTD.,
Petitioner,

vs.

LAURO DE LOS SANTOS and
SEATTLE STEVEDORE CO.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* ON BEHALF OF ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF LAURO DE LOS SANTOS, RESPONDENT

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To the Honorable Justices of the Supreme Court of the United States:

Consent of Parties

Pursuant to Rule 36 of the U. S. Supreme Court Rules, this Brief *Amicus Curiae* is being filed with the written consent of all parties to the case, copies of which are attached hereto, in support of Lauro de Los Santos, Respondent.

Statement of Interest

This Brief *Amicus Curiae* is being submitted by the Admiralty Law Section of The Association of Trial Lawyers of America, a national Bar Association consisting of more than 40,000 lawyers who primarily represent plaintiffs in personal injury and death litigation and workers' compensation. The Admiralty Law Section includes most of the attorneys throughout the United States who specialize in Maritime Personal Injury Law.

The pending case is of great importance which will decide the maritime law on the question presented and affect the welfare of many plaintiffs in maritime cases now pending throughout the country.

We believe that based on our research and analysis of the law and our experience in the maritime law and the interests of safety of workmen on board vessels, that our brief argument will be of assistance to the Court.

Our Brief will be limited to the one question presented herein without any reference or review of the facts.

Question Presented

Is the standard of care in a longshoreman's negligence action against a vessel owner under §905(b) of the U.S. Longshoremen's and Harbor Workers' Compensation Act as amended 1972, reasonable care under all of the circumstances?

Summary of Argument

I. In accordance with the legislative intent under § 905 (b) of the 1972 amendment of the Longshoremen's and Harbor Workers' Compensation Act in eliminating the action based on unseaworthiness and allowing a remedy for negligence, the standard of care that will enhance *safety* on board ship is *reasonable care under all the circumstances.*

II. The legislative history indicates that nothing in the Bill is intended to derogate from the vessel's responsibility to take appropriate corrective action where it knows or *should have known* about a dangerous condition so as to meet the objective of encouraging safety.

III. The standard of care based on the application of Restatement (Second) of Torts § 343 and § 343A derived from analogies to land-based tort concepts, which was heavily laden with the defenses of contributory negligence and assumption of risk, must be rejected as contrary to the intent of Congress.

IV. It is in the best interest of *safety* that *both* the stevedoring company and the vessel should be responsible to correct the dangerous condition. The failure of the stevedore to remedy a dangerous condition should not exculpate the shipowner from liability if it knew or should have known of the dangerous conditions. Otherwise it would negate liability based upon concurrent negligence and would not be in accordance with the legislative intent to encourage *safety.*

V. The application of Restatement (Second) of Torts would incorporate rules involving real estate torts and of invitees and licensees contrary to maritime traditions of simplicity and practicality and would undercut Congress' intention to promote safety.

VI. The standard of reasonable care under the circumstances established by *Santos,* the case under review, and followed by *Johnson* and *Griffith* will have the maximum positive impact on safety and will be consistent with the strong admiralty traditions of simplicity and practicality.

ARGUMENT

In accordance with the legislative intent under § 905 (b) of the 1972 Amendment of the Longshoremen's and Harbor Workers' Compensation Act in eliminating the action based on unseaworthiness and allowing a remedy for negligence, the standard of care that will enhance *safety* on board ship is *reasonable care under all the circumstances.*

This question now presented to the Supreme Court of the United States is of paramount importance because of the conflicting decisions of the Circuit Court of Appeals of the various Circuits, thus requiring the interpretation by the Supreme Court to bring uniformity to this phase of the maritime law on the basis of safety, having regard to the intent of Congress.

The 1972 amendment took away the right of the longshoremen and harbor workers to sue the vessel for breach of warranty of seaworthiness, but explicitly preserved their right to sue the shipowner for negligence. 33 U.S.C. § 905(b).

The Act does not define negligence so that the Circuits which have considered the question have applied different standards.

The Second, Fourth and Fifth Circuits have defined negligence under the 1972 Amendment in terms of a land-

owner's duty to invitees under the Restatement (Second) of Torts § 343 and § 343A.

This is based on the legislative history that "the vessel shall not be liable as a third party unless it is proven to have acted or failed to act in a negligent manner such as would render a *land-based* third party in non-maritime pursuits liable under similar circumstances.

Under § 343 and § 343A of Restatement (Second) of Torts, when the danger is open and obvious and in addition is avoidable in the exercise of ordinary care and therefore the harm is not foreseeable, it is not considered negligent to allow the danger to exist.

2nd Circuit *Napoli* v. *Hellenic Lines,* 536 F2d 505 (1976)
4th Circuit *Anuszewski* v. *Dynamic Mariner,* 540 F2d 757 (1976)
4th Circuit *Chavis* v. *Finnlines,* 576 F2d 1072 (1978)
5th Circuit *Brown* v. *Mitsubishi,* 550 F2d 331 (1977)
5th Circuit* *Gay* v. *Ocean Transport,* 546 F2d 1233 (1977)
5th Circuit *Samuels* v. *Empresa Lineas,* 573 F2d 884 (1978)

The 9th Circuit, 7th Circuit, 3rd Circuit and 1st Circuit have followed the ruling in the *Santos* v. *Scindia* case under review in this appeal which rejects the standard of

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* The Fifth Circuit in *Gay* v. *Ocean Transport* made clear that §343 and §343A were being followed for the purpose of uniformity of decisions in that circuit, but with the proviso that §343A is not interpreted to incorporate assumption of risk and contributory negligence as bars to recovery.

land-based tort concepts and adopts the standard of reasonable care under the circumstances.

9th Circuit *Bachtel* v. *Mammouth Bulk Carriers,* 605 F2d 438 (Aug 1979)
7th Circuit *Mathews* v. *Ernst Russ SS Co.,* 603 F2d 676 (Aug 1979)
9th Circuit *Lawson* v. *U.S.A.,* 605 F2d 448 (Aug 1979)
3rd Circuit *Griffith* v. *Wheeling-Pittsburg Steel,* 610 F2d 116 (Aug 1979)
1st Circuit *Johnson* v. *A/S Ivarans Roderi,* 613 F2d 334 (Jan 1980)

In the 2nd Circuit, the various panels were not in complete harmony resulting in dissenting opinions being filed.

Canizzo v. *Farrell Lines,* 579 F2d 682 (1978) disagreeing with (J. Friendly dissenting)
Cox v. *Flota Merchante,* 577 F2d 798 (1978)
Lubrano v. *Royal Netherlands,* 572 F2d 364 (1978) (C. J. Moore dissenting)
Giglio v. *Farrell Lines,* 613 F2d 429 (1980) (C J Oakes dissenting P 436)

The courts have looked to the legislative history of the Act for assistance to determine how the standard of care constituting negligence is to be construed and applied. The report of the House Committee No. 92-1411 on the 1972 Amendments is most helpful. The pertinent clauses are as follows:

"* * * Accordingly, the Committee has concluded that, given the improvement in compensation benefits which this bill would provide, it would be fairer to all concerned and fully consistent with the objective of protecting the health and *safety* of employees

who work on board vessels for the liability of vessels as third parties to be predicated on negligence, rather than the no-fault concept of seaworthiness. This would place vessels in the same position, insofar as third party liability is concerned, as land-based third parties in non-maritime pursuits.

The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as 'unseaworthiness', 'nondelegable duty', or the like."

* * *

"Permitting actions against the vessel based on negligence will meet the objective of encouraging *safety* because the vessel will still be required to exercise the same care as a land-based person in providing a safe place to work. Thus, nothing in this bill is intended to derogate from the vessel's responsibility to take appropriate corrective action where it knows or should have known about a dangerous condition. So, for example, where a longshoreman slips on an oil spill on a vessel's deck and is injured, the proposed amendments to Section 5 would still permit an action against the vessel for negligence. To recover he must establish that: 1) the vessel put the foreign substance on the deck, or knew that it was there, and willfully or negligently failed to remove it; or 2) the foreign substance had been on the deck for such a period of time that it should have been discovered and removed by the vessel in the exercise of reasonable care by the vessel under the cir-

> cumstances. The vessel will not be chargeable with the negligence of the stevedore or employees of the stevedore.
>
> Under this standard, as adopted by the Committee, there will, of course, be disputes as to whether the vessel was negligent in a particular case. Such issues can only be resolved through the application of accepted principles of tort law and the ordinary process of litigation—just as they are in cases involving alleged negligence by land-based third parties. The Committee intends that on the one hand an employee injured on board a vessel shall be in no less favorable position vis a vis his right against the vessel as a third party than is an employee who is injured on land, and on the other hand, that the vessel shall not be liable as a third party unless it is proven to have acted or have failed to act in a negligent manner such as would render a land-based third party in non maritime pursuits liable under similar circumstances. * * *"

The legislative history indicates that the main objective of the 1972 Amendment to the Act was to protect the health and *safety* of the longshoremen working on board vessels in granting liability of vessels as third parties on the basis of negligence rather than the no-fault concept of unseaworthiness. The objective of encouraging *safety* will be met by holding the vessel responsible to take appropriate corrective action where it knows or should have known about a dangerous condition.

In the latest decision of the 1st Circuit, *Johnson* v. *A/S Ivarans Rederi,* 613 F2d 334 (Jan. 1980) written by C. J. Bownes, the court stated:

"* * * The overriding purpose of the 1972 amendments was to create incentives for safety in the nation's second most dangerous profession.

Permitting actions against the vessel based on negligence will meet the objective of encouraging safety because the vessel will still be required to exercise the same care as a land-based person in providing a safe place to work. Thus, nothing in this bill is intended to derogate from the *vessel's responsibility* to *take appropriate corrective action* where is knows or *should have known* about a dangerous condition.

So, for example, where a longshoreman slips on an oil spill on a vessel's deck and is injured, the proposed amendments to Section 5 would still permit an action against the vessel for negligence. To recover he must establish that: 1) the vessel put the foreign substance on the deck, or knew that it was there, and willfully or negligently failed to remove it; or 2) the foreign substance had been on the deck for such a period of time that it should have been discovered and removed by the vessel in the exercise of reasonable care by the vessel under the circumstances. The vessel will not be chargeable with the negligence of the stevedore or employees of the stevedore.

House Report, supra, at 4704. This portion of the legislative history unequivocally asserts the intention of Congress that the vessel shall exercise a constant concern for the *safety* of longshoremen. In addition, it strongly implies that *Congress believed the 1972 amendments continued, rather than created, a duty on the part of the vessel to main-*

> *tain a safe place to work.* Although the last sentence acknowledges the stevedore's primary responsibility for safety in the work area, it also indicates that the vessel and the stevedore can be concurrently negligent in regard to a particular work hazard.* * *" (p. 339)
>
> "* * * Analyzing the House Report as a whole, we conclude that in enacting section 905(b), Congress intended that each of the parties in the stevedoring injury triangle—the vessel, the stevedore and the longshoreman—owe a duty to exercise reasonable care under the circumstances. Congress left to the courts the articulation and application of the standard of care in the particular circumstances of each case. The parameters of the standard of care the courts are to develop are clear: the vessel will continue to be liable for any negligent failure on its part to provide a safe place to work; OSHA regulations will continue to apply to all parties and may, in certain circumstances, define the appropriate standard of care; no standard of care may incorporate the doctrines of assumption of the risk, contributory negligence or liability without fault (unseaworthiness); the standard of care may be neither as unfavorable to the vessel as strict liability nor more unfavorable to the longshoreman than land-based tort law; the standard of care must evolve as a uniform body of national law; and, the body of law must develop as to have the *maximum impact on safety.* * * *" (p. 340)

In the case under review *Santos* v. *Scindia,* 598 F.2d 480, the Court stated:

> "First, Congress was concerned about *safety.* The Senate Committee on Labor and Public Welfare pro-

> tested that longshoring had an injury frequency rate 'well over four times the average for manufacturing operations,' and called for *safer working conditions* when it insisted that 'every appropriate means be applied toward improving the tragic and intolerable conditions which take such a heavy toll upon workers' lives and bodies . . .' Senate Report at 2 . . ." (p. 484)

The argument by the petitioner, Scindia Steam Navigation Co., Ltd., that the primary burden of safety should be upon the stevedore, and not upon the shipowner without actual knowledge of the unsafe conditions, is contrary to the express Congressional intent.

The House Report at 4704 provides "Thus nothing in this Bill is intended to derogate from the vessel's responsibility to take appropriate corrective action where it knows or *should have known* about a dangerous condition." It then proceeds to give the well known example of the oil spill on the vessel's deck.

Permitting actions against the vessel based on negligence was meant to "meet the objective of encouraging safety." (House Report, p. 4704)

The argument of the petitioner that it was Congressional policy that emphasis be placed on compensation payments and precluding recovery from shipowner when injury resulted from stevedore's breach of OSHA regulations or other contributing stevedore negligence is not supported by the Congressional intent expressed in their Committee reports. Congress was concerned that the vessel owner not become lax in doing what it should reasonably be required to do to prevent injuries to longshoremen. Petitioner is now attempting to take away the longshoreman's right to recover for negligence of the shipowner,

which Congress refused to do when it enacted the 1972 amendments.

It is in the best interest of *safety* that *both* the stevedoring company and the vessel should be responsible to correct the dangerous condition. The failure of the stevedore to remedy a dangerous condition in the area where longshoremen are working should not exculpate the shipowner from liability, if it knew or should have known of the dangerous conditions. To conclude otherwise would negate liability based upon concurrent negligence and would not be in accordance with the legislative intent to encourage *safety.**

Again quoting from the *Johnson* case, *supra*:

> ". . . The Supreme Court has recently noted that, within legislative parameters, '[a]dmiralty law is judge-made law to a great extent.' Edmonds v. Compagnie Generale Transatlantique, —— U.S. ——, 99 S.Ct. 2753, 61 L.Ed. 2d 521 (1979).
> In deveolping this uniform body of national law, we must discard any concept antithetical to the intent of Congress and may incorporate into it recognized legal concepts that will promote the primary congressional objective of longshoremen safety . . ." (p. 340-341)

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* In this regard, see *Clemons* v. *Mitsui O.S.K. Lines,* 596 F.2d 746, footnote 2, where the Seventh Circuit would appear to exonerate the vessel from liability if the stevedore were proven to have violated an OSHA regulation. It was also sharply criticized in *Johnson* v. *Ivarans Rederi,* supra, as being the type of case which is a pitfall inherent in the use of § 343 and § 343A approach in § 905(b) cases. See *Johnson,* footnote 12, p. 344-345, which concludes with "The effect of this rule, contrary to the intent of Congress, is to allow the vessel to be protected from its negligence." *Clemons,* Case No. 79-706 (Pet. for Cert. pending).

The First Circuit Court in the *Johnson* case, *supra* proceeded to adopt the standard of care "raised to maturity in *Santos* and *Griffith*" (P. 348):

> "* * * The standard of reasonable care under the circumstances permits a finding of negligence upon a showing:
>
> (1) that the vessel knew of or by the exercise of reasonable care could have discovered the condition on board ship that led to the injury;
>
> (2) that the vessel knew or should have known that the condition would pose an unreasonable risk of harm to longshoremen working on board ship; and
>
> (3) that the vessel failed to exercise reasonable care to protect the longshoremen against that danger. * * *"

The *Johnson* case, *supra,* rejected a blanket adoption of §343 and 343A of Restatement (Second) of Torts following *Santos* and the *Griffith* cases and stated

> ". . . We conclude from our review of the decisions of courts which have adopted sections 343 and 343A that those courts have, contrary to the wishes of Congress, placed a higher value on national uniformity in the law than upon the creation of a standard of care that will enhance *safety* on board ship. . . ." (p. 349)

As above noted, while the overriding purpose of the 1972 amendments was the safety of the longshoremen, it was not achieved by the application of Restatement (Second) of Torts Sec. 343-343A which was heavily laden with the

defense of assumption of risk and contributory negligence. This is contrary to the intent of Congress which specifically rejected any bar to recovery based upon assumption of risk and contributory negligence.

The land-based standard of care under the Restatement (Second) of Torts would incorporate the common law of invitees into maritime law. This would be contrary to the standard of care free of status distinctions, decided by the Supreme Court in *Kermarec* v. *Compagnie,* 358 U.S. 625, 79 S.Ct. 406.

The distinction between invitee and licensee is contrary to maritime traditions of simplicity and practicality and is no longer recognized by virtue of the *Kermarec* decision. Even in land-locked jurisdictions, status distinctions are being abolished in favor of a single duty of reasonable care under the circumstances.

As stated in the *Johnson* case, *supra*:

> "* * * We discern in the statute and its legislative history no requirement that, in fashioning this uniform body of national law, the courts must adopt writ large the tort concepts developed over the years as to possessors of land as the standard of care for an industry that has until this time been governed by the principles of maritime law . . ." (340)

The legislative history never refers to Restatement and never used real property tort law terms such as invitee. In analogizing the liability of the vessel to that of "land-based" third parties, it meant to indicate that liability cannot be based on the admiralty doctrine of unseaworthiness, or like no-fault concept. It cannot mean the wholesale adoption of rules involving real estate torts where

the relation of the parties are different than those involving a ship and longshoremen.

> See *Davis* v. *Inca Compania,* 440 Fed. Supp. 448 (W.D. Wash. 1977).
> *Gallardo* v. *Westfal-Larsen,* 435 Fed. Supp. 484 (N.D. Cal. 1977).

To assure uniformity, the House Report, at 4705, provided:

> "* * * Finally, the Committee does not intend that the negligence remedy authorized in the bill shall be applied differently in different ports depending on the law of the State in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of *Federal* law . . ."

Maritime Tort Law is inherently Federal and intended to be uniform. The longshoreman's cause of action is maritime. Traditional maritime principles are consistent with the intentions of Congress and should govern.

The only Federal law which the House Report at 4705 could have been alluding to is Federal Maritime Law. This Court, in *Kermarec* v. *Compagnie, supra,* rejected a Court's charge styled on Restatement (Second) of Torts, § 343-343A, so strongly proposed by the petitioner—the vessel owner. See Note 2 on page 408, *Kermarec* decisions (1959). It is clear that Restatement of Torts has not governed the standard of care in negligence actions resulting from ship board accidents.

As the Supreme Court in the *Kermarec* opinion written by Mr. Justice Stewart stated:

> "* * * The incorporation of such concepts appears particularly unwarranted when it is remembered that they originated under a legal system in which status depended almost entirely upon the nature of the individual's estate with respect to real property, a legal system in that respect entirely alien to the law of the sea. *We hold that the owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case . . .*" (P. 410) (Italics ours)

If Congress was dissatisfied with the *Kermarec* rule of reasonable care under all the circumstances, it could have expressed such intention in enacting the 1972 amendment.

This Court should not now change what Congress understood to be the law when it enacted the 1972 amendment. It was so held by this Court in the case of *Edmonds* v. *Compagnie Generale Transatlantique,* 99 S.Ct. 2753 (1979), 358 U.S. 625, in a decision written by Mr. Justice White:

> "* * * In 1972 Congress aligned the rights and liabilities of stevedores, shipowners, and longshoremen in light of the rules of maritime law that it chose not to change. 'One of the most controversial and difficult issues which [Congress was] required to resolve . . . concern[ed] the liability of vessels, as third parties, to pay damages to longshoremen who are injured while engaged in stevedoring operations.' S.Rep. 8. By now changing what we have already established that Congress understood to be the law, and did not itself wish to modify, we might knock out of kilter this delicate balance. As our cases advise, we should stay our hand in these circumstances . . ." (P. 2763)

This Court has sought out the view of the Executive Branch on this very issue in the case of *American Commercial Lines* v. *Griffith* (100 Sup.Ct. 727 (1980) on Petition to the Third Circuit, 610 F.2d 116). The Government endorses the standard of reasonable care and we quote from Footnote 6, p. 6, *Brief Amicus Curiae* filed by the Solicitor General, October Term, 1979, No. 79-813:

> "As an abstract matter, we believe that the court of appeals has correctly construed Section 5(b). Although Congress indicated, that Section 5(b) incorporates 'land-based' principles of negligence (see *e.g.*, H.R. Rep. No. 92-1441, *supra,* at 4, 6; *Lubrano* v. *Royal Netherlands Steamship Co.,* 572 F.2d 364, 366 (2d Cir. 1978), it did not state that vessel owners should be treated as land owners in all circumstances. To the contrary, the language and legislative history of Section 5(b) strongly suggest that Congress intended the courts to apply general negligence principles in these cases. See H.R. Rep. No. 92-1441, *supra,* at 408. As the court of appeals pointed out (Pet. App. 12a-14a), the conclusion also seems more consistent with this Court's analysis in *Edmonds* v. *Compagnie Generale Transatlantique, supra,* and *Kermarec* v. *Compagnie Generale Transatlantique, supra,* 358 U.S. at 630-632, and with Congress' intent to reject common law rules of contributory negligence and assumption of risk. See generally *Johnson* v. *A/S Ivarans Rederi, supra,* 613 F.2d at 337-349. Finally, adoption in this context of the limitations imposed on a landowner's liability to an invitee 'would undercut Congress' intention to reduce the frequency of accidents by creating economic incentives to provide safer working conditions.' *Santos* v. *Scindia Steam Navigation Co., supra,* 598 F.2d at 487."

It is to be expressly noted that the Solicitor General in the Brief for the United States as *Amicus Curiae* filed in the *Griffith* case at the invitation of the United States Supreme Court on the question "Whether Sec. 5(b) of the Longshoremen's and Harbor Workers' Compensation Act establishes a general negligence standard in suits by longshoremen against vessel owners" agreed with the Circuit Court of Appeals' construction of Section 5(b) that imposes a general duty on vessel owners to exercise reasonable care under all the circumstances, citing *Johnson* and *Santos* cases.

The Brief of the United States further agrees that the contention that a vessel owner is liable only on those circumstances in which an owner of land would be accountable to an invitee would undercut Congress' intention to promote safety. *Santos,* p. 487.

Most important, requiring the vessel to exercise reasonable care under all the circumstances fulfills the legislative purpose to create safety incentives. *Davis* v. *Inca Compania, supra, Johnson* v. *Ivarans Rederi, supra.*

CONCLUSION

For the reasons stated, the standard of care set forth by the Court below, the Ninth Circuit, in a longshoreman's negligence action against a vessel owner under § 905(b) of the U. S. Longshoremen's & Harbor Workers' Compensation Act as amended in 1972, which they find responds to all five of Congress' concerns, including the promotion of safety, constitutes adoption of "reasonable care under the circumstances" standard which justifies the affirmance of this Ninth Circuit decision by this Court.

Respectfully submitted,

on behalf of

ASSOCIATION OF TRIAL LAWYERS OF AMERICA,

HARRY M. PHILO, President,

ARTHUR ROTH, Chairman,
Admiralty Law Section,

NATHAN BAKER, Of Counsel,

JAMES A. GEORGE, Of Counsel,

ROSS M. DIAMOND, Of Counsel.

Letter from James A. Grutz, Esq to Nathan Baker, Esq., dated June 20, 1980

[LETTERHEAD OF JACKSON, ULVESTAD, GOODWIN & GRUTZ]

June 20, 1980

Nathan Baker, Esq.
1 Newark Street
P.O. Box M-H
Hoboken, N.J. 07030

Re: Santos v. Scindia Steam Navigation Company
No. 79-512

Dear Mr. Baker:

I am writing at this time to indicate my consent to the filing of an amicus brief in this matter.

Very truly yours,

JACKSON, ULVESTAD, GOODWIN & GRUTZ

JAMES A. GRUTZ

JAG:kg

cc: Graydon S. Staring, Esq.
cc: James A. George, Esq.
cc: Ross M. Diamond, Esq.

Letter from Grayden S. Staring, Esq. to Nathan Baker, Esq., dated June 26, 1980

[LETTERHEAD OF LILLICK MCHOSE & CHARLES]

June 26, 1980

Nathan Baker, Esq.
Baker, Garber, Duffy & Baker
1 Newark Street
P.O. Box M-H
Hoboken, New Jersey 07030

RE: Santos v. Scindia Steam Navigation Co., Ltd.
No. 70-512

Dear Mr. Baker:

I hereby consent to the filing of a brief amicus curiae in the above case on behalf of the Association of Trial Lawyers of America.

Very truly yours,

LILLICK MCHOSE & CHARLES

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